

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SHAW FAMILY ARCHIVES, LTD.,
BRADFORD LICENSING, INC., JAMES E.
DOUGHERTY, and VALHALLA
PRODUCTIONS, LLC.

Plaintiffs/Consolidated Defendants,

V.

CMG WORLDWIDE, INC. and MARILYN
MONROE, LLC,

Defendants/Consolidated Plaintiffs.

[illegible]

05 CV 3939 (CM)

Honorable Colleen McMahon

**SUPPLEMENTAL DECLARATION OF MARK ROESLER
IN SUPPORT OF MARILYN MONROE, LLC’S MOTION FOR SUMMARY AND IN
OPPOSITION TO SFA AND BRADFORD’S CROSS-MOTION FOR SUMMARY
JUDGMENT.**

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DECLARATION OF MARK ROESLER

I, Mark Roesler, declare and state as follows:

1. I am over 18 years of age and am competent and capable of making this declaration in support of Marilyn Monroe, LLC's Motion for Summary Judgment on Count II against Shaw Family Archives, Ltd. ("SFA") and in opposition to SFA's and Bradford Licensing Associates' ("Bradford") cross-motion for summary judgment. The following facts are personally known to me and, if called as a witness, I could and would testify competently thereto.

2. I am the founder of CMG Worldwide, Inc. ("CMG"), which is headquartered in Indianapolis, Indiana. I am currently the Chairman and Chief Executive Officer of CMG, and I operate primarily out of the Indianapolis office of CMG. As Chairman and Chief Executive Officer of CMG, I am primarily responsible for the operations of CMG. In that capacity, I am involved in the marketing and licensing of approximately 200 entertainment, sports, historical and music celebrities, as well as trademarks belonging to various corporate entities (including Marilyn Monroe).

3. CMG was hired as the representative to manage and exploit the name, image, persona, and likeness of Marilyn Monroe ("Monroe Intellectual Property Rights") in 1995.

4. At least as early as June 1999, CMG had been communicating with members of the Shaw Family. Sam Shaw's daughters, Edith Marcus and Meta Stevens, acknowledged that many of their photographs were in the public domain, but they wanted to license the images in their possession out to their various companies interested in Marilyn Monroe. They acknowledged that the Marilyn Monroe Estate owned numerous trademark rights and the right of publicity, but wanted to have CMG either represent their images or in the alternative refer some

of the companies with whom we had licensed the Marilyn rights to them. We had discussions over the years and we often would refer licensees of Marilyn Monroe to the Shaw family on different occasions.

5. Since those discussions in 1999, SFA has had many communications with CMG regarding the Monroe Intellectual Property Rights, and I have spoken to Larry Shaw, Meta Shaw-Stevens, Frank Stevens, and other members of the Shaw family personally on a number of occasions. Throughout these communications, CMG repeatedly made SFA aware of Plaintiffs' interest in and rights to the Monroe Intellectual Property Rights. Moreover, it is clear from SFA's conduct that SFA was fully aware that the Monroe Intellectual Property Rights are owned by Marilyn Monroe LLC and administered by CMG, and it was my opinion that they respected those rights.

6. For the most part, CMG's dealings with SFA were amicable and mutually beneficial, and SFA never disputed or indicated that it would not recognize the rights of CMG or Marilyn Monroe LLC, until 2004. Until 2004, CMG was not aware of any licenses granted by SFA involving the Monroe Intellectual Property Rights.

7. In reliance on the fact that SFA had worked amicably with CMG and Marilyn Monroe LLC to secure numerous licenses for many years, Plaintiffs decided to continue working with SFA while monitoring its licensing activities to assure that Plaintiffs' rights were not violated.

8. On March 2, 2004, CMG received an email communication from a licensee informing CMG that it had recently received an email communication from Bradford Licensing informing the licensee that Bradford had a significant number of Marilyn Monroe images available for licensing and that a separate license from the Monroe Estate was not needed.

9. On March 4, 2004, CMG mailed a letter to Len Reiter, president of Bradford Licensing Associates, providing notice of CMG's awareness of Bradford's activities involving its alleged representation of, and unauthorized use of, the Monroe Intellectual Property Rights. This letter included a demand that Bradford immediately cease and desist "from engaging in activities which conflict with CMG's exclusive right to represent Marilyn Monroe LLC." The letter also included a demand that Bradford "cease and desist from licensing any good which implicates the [Monroe Intellectual Property Rights][.]" A true and correct copy of the March 4, 2004 letter is attached hereto as Exhibit A.

10. Shortly thereafter CMG became aware that Bradford Licensing had posted an internet website and announced that "[o]ver 500 never before seen photos and clips . . . are now available for license." The website included an invitation to contact Michele Minieri, Director of Marketing & Licensing at Bradford Licensing Associates, providing her email address. A true and correct copy of these websites pages is attached as Exhibit B.

11. On March 9, 2004, CMG received an email communication from a licensee displaying an email solicitation from Bradford Licensing asserting that because Marilyn Monroe's name is in the public domain, Bradford can use her name in association with various photographs. A true and correct copy of the March 9, 2004 email exchange is attached hereto as Exhibit C.

12. In light of that series of developments, CMG and Marilyn Monroe LLC filed this lawsuit in the Southern District of Indiana against SFA and Bradford. CMG and MMLLC filed their original complaint in the Southern District of Indiana against SFA on March 18, 2005.

I declare under penalty of perjury under the laws of the United States that I believe the foregoing is true and correct. Executed on this 22nd day of December, 2006 in Indianapolis, Indiana.



Mark Roesler

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